



Billing Code: 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R09-OAR-2013-0681; FRL-9901-85-Region 9]**

**Approval and Promulgation of State Implementation Plans; Hawaii; Infrastructure  
Requirements for the 2008 Lead National Ambient Air Quality Standard**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

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**SUMMARY:** EPA is proposing to approve elements of a State Implementation Plan (SIP) revision submitted by the State of Hawaii on February 13, 2013, pursuant to the requirements of the Clean Air Act (CAA or the Act) for the 2008 Lead (Pb) national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA. We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Written comments must be received on or before **[Insert date 30 days after publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R09-OAR-2013-0681, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail*: richmond.dawn@epa.gov

3. *Fax:* 415-947-3579

4. *Mail or deliver:* Dawn Richmond, Air Planning Office (AIR-2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Deliveries are only accepted during the Regional Office's normal hours of operation.

*Instructions:* All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail. <http://www.regulations.gov> is an anonymous access system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

*Docket:* The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

**FOR FURTHER INFORMATION CONTACT:** Dawn Richmond, Air Planning Office (AIR-2), U.S. Environmental Protection Agency, Region IX, (415) 972-3207, *richmond.dawn@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms “we,” “us,” and “our” refer to EPA.

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## **I. Background**

### **A. Statutory Framework and Scope of Infrastructure SIPs**

Section 110(a)(1) of the CAA requires states to make a SIP submission within 3 years after the promulgation of a new or revised primary NAAQS. Section 110(a)(2) includes a list of specific elements that “[e]ach such plan” submission must include. Many of the section 110(a)(2) SIP elements relate to the general information and authorities that constitute the “infrastructure” of a state’s air quality management program and SIP submittals that address these requirements are referred to as “infrastructure SIPs.” These infrastructure SIP elements are as follows:

- Section 110(a)(2)(A): Emission limits and other control measures.

- Section 110(a)(2)(B): Ambient air quality monitoring/data system.
- Section 110(a)(2)(C): Program for enforcement of control measures and regulation of new stationary sources.
- Section 110(a)(2)(D)(i): Interstate pollution transport.
- Section 110(a)(2)(D)(ii): Interstate and international pollution abatement.
- Section 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies.
- Section 110(a)(2)(F): Stationary source monitoring and reporting.
- Section 110(a)(2)(G): Emergency episodes.
- Section 110(a)(2)(H): SIP revisions.
- Section 110(a)(2)(J): Consultation with government officials, public notification, and prevention of significant deterioration (PSD) and visibility protection.
- Section 110(a)(2)(K): Air quality modeling and submission of modeling data.
- Section 110(a)(2)(L): Permitting fees.
- Section 110(a)(2)(M): Consultation/participation by affected local entities.

Two elements identified in section 110(a)(2) are not governed by the three-year submission deadline of section 110(a)(1) and are therefore not addressed in this action. These elements relate to part D of title I of the CAA, and submissions to satisfy them are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the same time nonattainment area plan requirements are due under section 172. The two elements are: (i) section 110(a)(2)(C) to the extent it refers to permit programs required under part D (nonattainment New Source Review (NSR)), and (ii) section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. As a result, this action does not address

infrastructure elements related to the nonattainment NSR portion of section 110(a)(2)(C) or related to 110(a)(2)(I).

In addition, this rulemaking does not address three substantive issues that are not integral to acting on a state's infrastructure SIP submission: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources (SSM), that may be contrary to the CAA and EPA's policies addressing such excess emissions; (ii) existing provisions related to "director's variance" or "director's discretion" that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (director's discretion); and, (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule."<sup>1</sup> Instead, EPA has indicated that it has other authority to address any such existing SIP defects in other rulemakings, as appropriate. A detailed rationale for why these issues are not part of the scope of infrastructure SIP rulemakings can be found in EPA's proposed rule entitled, "Approval and Promulgation of State Implementation Plans; Hawaii; Infrastructure Requirements for the 1997 8-Hour Ozone and the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards" in section I.C ("Scope of the Infrastructure SIP Evaluation").<sup>2</sup>

## **B. Regulatory Background**

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<sup>1</sup> 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (NSR Reform).

<sup>2</sup> 77 FR 21913, 21914 (April 12, 2012). That proposal also describes a similar rationale with respect to existing provisions for minor source NSR programs. However, that rationale is not relevant to today's proposal, as EPA recently approved a comprehensive set of revisions to Hawaii's previous minor source NSR rules. 77 FR 24148 (April 23, 2012).

On October 15, 2008, EPA issued a revised NAAQS for Pb.<sup>3</sup> This action triggered a requirement for states to submit an infrastructure SIP to address the applicable requirements of section 110(a)(2) by October 15, 2011. On October 14, 2011, EPA issued “Guidance on Section 110 Infrastructure SIPs for the 2008 Pb NAAQS.”<sup>4</sup>

## **II. State Submittal and EPA Action**

On February 13, 2013, the Hawaii Department of Health (HDOH) submitted the “Hawaii State Implementation Plan Revision for 2008 Lead National Ambient Air Quality Standard Clean Air Act §110(a)(1) & (2)” (Hawaii Pb Infrastructure SIP), which includes (1) an “Infrastructure SIP Certification of Adequacy,” (2) Hawaii Administrative Rules (HAR) section 11-60.1-90, (3) three technical support documents concerning interstate transport under 110(a)(2)(D) and (4) other supporting materials.<sup>5</sup>

On February 26, 2013, EPA found that Hawaii had failed to make a complete submittal to satisfy the requirements of section 110(a)(2) for the 2008 Pb NAAQS.<sup>6</sup> Specifically, EPA found Hawaii failed to submit the infrastructure SIP elements that relate to the prevention of significant deterioration (PSD) program in CAA sections 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J).<sup>7</sup> We also explained that, because EPA had already promulgated a FIP that addresses PSD-

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<sup>3</sup> 73 FR 66964. The final rule was signed on October 15, 2008 and published in the Federal Register on November 12, 2008. The 1978 Pb standard (1.5 µg/m<sup>3</sup> as a quarterly average) was modified to a rolling 3 month average not to exceed 0.15 µg/m<sup>3</sup>. EPA also revised the secondary NAAQS to 0.15 µg/m<sup>3</sup> and made it identical to the revised primary standard.

<sup>4</sup> See Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors, Regions 1-10 (October 14, 2011).

<sup>5</sup> A copy of the complete Hawaii Pb Infrastructure SIP submittal has been placed in the docket for this action.

<sup>6</sup> 78 FR 12961.

<sup>7</sup> *Id.*

related requirements for Hawaii, the finding of failure to submit would not trigger any additional PSD FIP obligations.

### **III. EPA's Evaluation and Proposed Action**

EPA has evaluated the Hawaii Pb Infrastructure SIP in relation to the infrastructure SIP requirements of CAA section 110(a)(2) and the applicable implementing regulations in 40 CFR Part 51. The Technical Support Document (TSD) for this action, which is available in the docket to this action, includes our evaluation for each element, as well as our evaluation of HAR section 11-60.1-90.

Based upon this analysis, EPA proposes to approve HAR section 11-60.1-90 into the Hawaii SIP. We also propose to approve the Hawaii Pb Infrastructure SIP with respect to the following requirements:

- Section 110(a)(2)(A): Emission limits and other control measures.
- Section 110(a)(2)(B): Ambient air quality monitoring/data system.
- Section 110(a)(2)(C) (in part): Program for enforcement of control measures and regulation of new stationary sources (minor NSR program) only.
- Section 110(a)(2)(D)(i)(I): Interstate transport (significant contribution and interference with maintenance).
- Section 110(a)(2)(D)(i)(II) (in part): Interstate transport (visibility protection only).
- Section 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies.
- Section 110(a)(2)(F): Stationary source monitoring and reporting.
- Section 110(a)(2)(G): Emergency episodes.

- Section 110(a)(2)(H): SIP revisions.
- Section 110(a)(2)(J) (in part): Public notification.
- Section 110(a)(2)(K): Air quality modeling and submission of modeling data.
- Section 110(a)(2)(L): Permitting fees.
- Section 110(a)(2)(M): Consultation/participation by affected local entities.

As explained above, we previously found the Hawaii Pb Infrastructure SIP incomplete with respect to the PSD-related requirements of section 110(a)(2). Under CAA section 110(k)(1)(C), where EPA determines that a portion of a SIP submission is incomplete, “the State shall be treated as not having made the submission (or, in the Administrator's discretion, part thereof).” Accordingly, we are not proposing to act on the Hawaii Pb Infrastructure SIP with respect to the PSD-related requirements in Sections 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J).

#### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations (42 U.S.C. 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves some state law as meeting federal requirements; this proposed action does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999); is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

Dated: September 25, 2013

Jared Blumenfeld,  
Regional Administrator,  
EPA Region 9.

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